

IN THE UNITED STATES DISTRICT COURT
FOR THE UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FILED
APR - 9 2015

BYRON DEAN WALLER,
Plaintiff,

MATTHEW J. DYKMAN
CLERK

PROVIDED TO
SUWANNEE C.I. ON
APR 03 2015
FOR MAILING

CASE NO. 1:14-cv-000921-LH-KBM

v.

MICHAEL JAMES WALLER
and PAULA WALLER,
Defendants.

PLAINTIFF'S MOTION IN OPPOSITION TO DEFENDANTS'
NOTICE OF COMPLETION OF BRIEFING

COMES NOW, Plaintiff Byron Dean Waller files this Motion in opposition to Defendant's Notice of Completion of Briefing. In support of this motion Plaintiff states as follows:

- 1.) Defendants motion should not be granted because Plaintiff simply has not had enough time to respond. He was unaware of D.N.M. Local Rule Civ-7.4(e) until receipt of Defendants motion. Plaintiff not being an attorney is unaware of Local Rules. Document 25, filed 3-30-15
- 2.) Plaintiff received Defendants Motion for Summary Judgment and immediately requested access to the prison's law library. Because of nearly 1500 prisoners and only 5 Westlaw Computer Terminals, law library access is in demand. For example, Plaintiff submitted requests for law library access on 2-21-15 and was scheduled for 3-10-15 and on 2-22-15 and was scheduled on 3-12-15. See Attached.

It took nearly three (3) weeks just to be scheduled for access to the prison law library, without any fault or lack of diligence on Plaintiff. More law library request are available, But more would just be repetitious.

3.) Plaintiff has simply not been able to file a meaningful response, he has only had access to a computer a few times, and that, has only occurred since March 10, 2015. Plaintiff has only had three (3) weeks to research summary judgment - Less than 3 full hours on a computer terminal, not knowing or being trained in law, to be able to file a response to a motion by Defendants of this "MAGNITUDE", Plaintiff will simply need more time.

4.) A prisoner can only be scheduled law library access five (5) hours a week. Computer terminals are a "first come, first serve, basis". An actual race by prisoners to get a computer. Plaintiff is old, slow, and walker with a cane. He cannot compete with younger prisoners. Plus law library only contains "OLD LAW BOOKS" that a retired attorney donated, (computer access is 30 minutes a day)

5.) Defendants cited, Missouri Statutes and Case Law. And cited, New Mexico Statutes and Case Law, in their Motion for Summary Judgment. Plaintiff, "HAS NO ACCESS TO ANY OF THIS LAW". He cannot even form an opinion or intelligently investigate, research, or argue a law or case, contrary to Defendants cited cases, etc...

6.) FOR THE RECORD, Plaintiff does not have a fancy office, a desk, a computer, or 100's of current law books. Plaintiff does not even have a picnic table

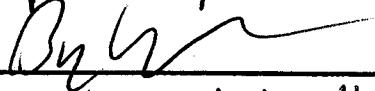
to write a motion on. He must take "NOTES" of anything important on the computer, "then write the document on his bed," this is all done in an open-bay dorm, with 85 other prisoners, with beds 30 inches apart. The noise and interruptions are excessive.

7.) The "URGENT NEED" for Defendants Motion for Summary Judgment to be granted, does not give Plaintiff the time required to file a meaningful response.

8.) Plaintiff has prepared an Application for Appointment of Counsel, (it's being typed). This Honorable Court should receive it in a couple weeks. There are "New Facts" alleged in this document where a reasonable jury could return a verdict for the Plaintiff.

WHEREFORE, Plaintiff prays Defendants Notice of Completion of Briefing not be granted. And, Allow Plaintiff a reasonable amount of time to respond, (given all the circumstances) to Defendants Motion for Complete Summary Judgment. Would this Honorable Court furnish Plaintiff, District of New Mexico Local Rules.

Respectfully Submitted



Byron Dean Weller # K06593
Suwannee C. I. - Annex
5964 U.S. Highway 90
Live Oak, Florida 32060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was placed in the hands of prison officials for mailing via United States Mail, to The Law Office of Felker, Ish, Ritchie & Geer, P.A. Attn: Randolph B. Felker at 911 Old Pecos Trail, Santa Fe, New Mexico 87505 on this 3 day of APRIL 2015.

By
Byron Dean Waller

REQUEST

Law Library

Byron Waller K06593 K11605 H/M 2-21-15

Please schedule me for law library

Sincerely

K06593

Byron Waller

RESPONSE

3/10

LAW 2PM

Block

MAR 02 2015

REQUEST

Law Library

Byron Waller K06593 K11605 H/M 2-22-15

Please schedule me for law library

sincerely

Byron Waller

K06593

RESPONSE

FEB 23 2015

Law Library 2/23/15

Block

MAR 03 2015

Byron Waller # K0693
Suwannee C.I. Annex
964 U.S. Hwy 90
Line Dak, FL. 32060

RECEIVED
At Albuquerque NM
APR 09 2015
MATTHEW J. DYKMAN
Clerk

Mailed From State
Correctional
Institution
Suwannee C.I.



U.S. POSTAGE FITNEY BOWES
02 1W ZIP 32060 \$ 000.69⁰
0001384677 APR 03 2015

United States District Court
District of New Mexico
SUITE 270
333 LOMAS BLVD. N.W.
SANTA FE, NEW MEXICO 87501
\$.69

LEGAL MAIL